

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re:

Chapter 9 No. 13-53846

City of Detroit, Michigan
Debtor.

Hon. Steven W. Rhodes

**MOTION FOR RELIEF FROM THE AUTOMATIC STAY AND ENTRY OF
ORDER WAIVING THE PROVISIONS OF FED. R. BANKR. P. 4001 (a) (3)**

Fifth Third Bank, as servicer for Fifth Third Mortgage Company, by and through its attorneys, Trott & Trott, P.C., pursuant to 11 U.S.C. § 362(d), 11 U.S.C. § 922(b), L.B.R. 4001-1(E.D.M.), and L.B.R. 9014-1 (E.D.M.), moves for relief from the Automatic Stay to proceed under applicable non-bankruptcy law to enforce its remedies to foreclose upon and/or obtain possession of property commonly known as 20245 Mendota St., Detroit, MI 48221 (the "Property"); and for waiver of the provisions of Fed. R. Bankr. P. 4001 (a) (3); and in support thereof states as follows:

1. This Court has jurisdiction over the proceeding pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. On July 18, 2013, Debtor sought protection under Chapter 9 of the Bankruptcy Code.

3. Pursuant to 11 U.S.C. § 922(a), the automatic stay of 11 U.S.C. § 362(a) became applicable at the time that the bankruptcy petition was filed.

4. Movant is the servicer for Fifth Third Mortgage Company who is the holder of a mortgage encumbering the Property, which is currently owned by Audrey Abby. See, **Loan Documents, Exhibit 6-A.**

5. The Mortgage of Fifth Third Mortgage was recorded on October 12, 2006 in Liber 45416, Page 1685 with the Wayne County Register of Deeds.

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6. There exists a September 21, 2006 mortgage on the Property that is in the original amount of \$10,000.00, which was granted to the City of Detroit by Audrey Abby (the "CoD Junior Mortgage"). **See, CoD Junior Mortgage, Exhibit 6-B.**

7. The CoD Junior Mortgage was recorded October 12, 2006 in Liber 45416, Page 1695 with the Wayne County Register of Deeds and is junior in priority to the Mortgage held by Fifth Third Mortgage Company.

8. The approximate market value of the Property is \$38,926.00. **See, SEV, Exhibit 6-C.**

9. Trott & Trott, P.C. has been informed by Movant that the amount due and owing is approximately \$53,411.57.

10. There is sufficient cause for modification of the Automatic Stay so that Movant, and any successors or assigns, may proceed under applicable non-bankruptcy law to enforce its remedies to foreclose upon and/or obtain possession of the Property because the Debtor and the bankruptcy estate will not receive any benefit from the sale of the Property with respect to the CoD Junior Mortgage as the value of the Property is less than the amount of the Mortgage held by Fifth Third Mortgage Company.

11. The City of Detroit Treasurer, City of Detroit Department of Planning & Development, Fifth Third Bank and Secretary of Housing and Urban Development may have an interest in the subject property to the knowledge and belief of Movant.

12. Pursuant to LBR 9014-1(b)(4) (E.D.M.), a copy of the proposed *Order Granting Relief from the Automatic Stay and Waiving the Provision of Fed. R. Bankr. P. 4001(a)(3)* is labeled as Exhibit "1".

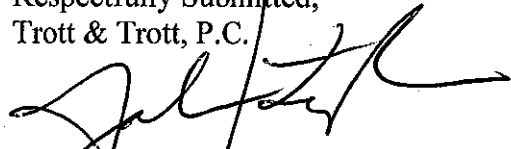
13. Movant also requests that in the event a hearing on this motion is held, and Movant prevails, that the Court order the submission of an order in substantial compliance with Exhibit 1 and that presentment of the order waived.

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14. Concurrence from Debtor's counsel was sought by counsel for Movant on October 30, 2013 and concurrence was not given.

WHEREFORE, Movant respectfully requests that the Court enter an Order Granting Relief from the Automatic Stay and Waiving the Provision of Fed. R. Bankr. P. 4001(a)(3) for good cause shown pursuant to 11 U.S.C. §362(d)(1) and/or (2), and that the Order is effective immediately upon entry by this Court notwithstanding the provision of Fed R. Bankr. P. 4001(a) (3); and whatever other relief the Court deems just and equitable.

Respectfully Submitted,
Trott & Trott, P.C.



/s/ John P. Kapitan (P61901)
Attorney for Fifth Third Bank as
servicer for Fifth Third Mortgage
Company

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Dated: November 1, 2013

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EXHIBIT 1

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
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In re:
City of Detroit, Michigan
Debtor.

Chapter 9 No. 13-53846

Hon. Steven W. Rhodes

**ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY AND ENTRY OF
ORDER WAIVING THE PROVISIONS OF FED. R. BANKR. P. 4001 (a) (3)**

Fifth Third Bank, as servicer for Fifth Third Mortgage Company, by and through its attorneys, Trott & Trott, P.C., having filed a *Motion for Relief from the Automatic Stay and Entry of Order Waiving the Provisions of Fed. R. Bankr. P. 4001(a)(3)* (the "Motion") that seeks relief from the Automatic Stay under 11 U.S.C. § 362 so that Movant, and any successor or assign, may proceed under applicable non-bankruptcy law to enforce its remedies to foreclose upon and/or obtain possession of the property commonly known as 20245 Mendota St., Detroit, MI, 48221; and the Court being fully advised in the premises:

IT IS HEREBY ORDERED that Movant, and any successor or assign, is granted relief from the Automatic Stay so that it may proceed under applicable non-bankruptcy law to enforce its remedies to foreclose upon and/or obtain possession of the property commonly known as 20245 Mendota St., Detroit, MI 48221.

IT IS FURTHER ORDERED that this Order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Bankruptcy Code.

IT IS FURTHER ORDERED that Fed. R. Bankr. P. 4001(a) (3) is waived.